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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,198	09/15/2003	Guenther Kirschner	0259-0417P	1390
2292 7590 11/06/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
MARX, IRENE				
ART UNIT		PAPER NUMBER		
1651				
NOTIFICATION DATE		DELIVERY MODE		
11/06/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

The information disclosure statement filed 10/22/08 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

### ***Response to Arguments***

Applicant's arguments have been fully considered but they are not deemed to be persuasive.

Applicant asserts that the product of the chemical reaction "is very pure". However that cannot be equated with 100% purity as encompassed by "over 95% pure". No basis or support for the purity as claimed has been provided in the as-filed written disclosure.

Regarding the formula in the claims, if applicants recite a sodium salt as constituting the subject of the claims, to be consistent and avoid confusion the formula should provide for the same compound.

Applicant appears to confuse product claims with composition claims regarding the contents thereof. Inasmuch as the product of Sakai contains the same active ingredient as claimed in some undefined amounts, it can reasonably be presumed that upon mixing with other ingredients, the effects of the active ingredients will be the same, regardless of the initial degree of purity, and applicant has not shown otherwise.

The Patent and Trademark Office is not equipped to conduct experimentation in order to determine whether or not applicants' pharmaceutical, cosmetic and food compositions differ and, if so, to what extent, from the compositions discussed in the references. The amount of the compounds of interest in the composition is not a claim designated limitation. Accordingly, inasmuch as the examiner has established that the prior art compositions contain the same active ingredient as that claimed, she has reasonably demonstrated a reasonable likelihood/possibility that the compared compositions are either identical or sufficiently similar that whatever differences exist are not patentably significant. Therefore, the burden of establishing non-obviousness by objective evidence shifted to Applicants. Applicants have not met that burden.

Applicant has not provided evidence to substantiate arguments directed towards the purity of the composition. Similarly, applicant has not substantiated the arguments directed to Sakai as "non-enabling" with appropriate evidence.

Therefore the rejection is deemed proper and it is adhered to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 .

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Irene Marx/  
Primary Examiner  
Art Unit 1651